ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
The Merger of MCI Communications	)	GN Dkt No. 96-245
Corporation and	)	
British Telecommunications plc	)	

PETITION TO DENY OF BELL ATLANTIC

The applicants have not made the necessary showing to justify British Telecom's proposed takeover of MCI. As such, the license transfer applications filed in connection with the takeover must be denied.

As BT/MCI themselves acknowledge, the applicants here must demonstrate that effective opportunities exist for U.S. carriers to interconnect and provide competing local and long distance service in the United Kingdom, and that adequate safeguards are in place to protect against the risk of anticompetitive conduct. They have not done so. On the contrary, the United Kingdom does not have in place, and in some instances has affirmatively rejected, the very measures that MCI itself has argued are critical prerequisites to creating effective opportunities to compete in this country, and that Congress enacted into law in the 1996 Act. To cite just a few examples, BT is not required to provide access to unbundled elements of its network, is not required to make its services available for resale at a wholesale discount, and is not even required to provide competing long distance providers with equal access to its local facilities.

BT/MCI cannot have it both ways. They cannot meet their burden of showing that the U.K. market is sufficiently open, while simultaneously arguing in the context of Bell company long distance applications or elsewhere that the even more open U.S. market is not. It is

incumbent on BT/MCI to explain why the U.K. markets are sufficiently open, despite their own assertions to the contrary. Until they do, their license transfer applications must be denied. In the meantime, BT/MCI should be required to produce any documents that are relevant to determining what it is that BT/MCI really believe is required to open a market to competitive entry.

1. The standard. Under the Commission's rules, the applicants must demonstrate that effective competitive opportunities exist for U.S. carriers in the United Kingdom. See Market Entry and Regulation of Foreign-Affiliated Entities, 11 FCC Rcd 3873 (1995) ("Foreign Carrier Order"). A critical element of that test is a demonstration that interconnection arrangements are available to competing carriers on reasonable terms and conditions, including carriers that provide competing local and long distance (or "intercity") service in that country. Id. at ¶¶ 40-50, 213. In addition, they must demonstrate that adequate safeguards are in place to protect against the possibility of anticompetitive conduct. Id. at ¶ 40.

The applicants here effectively concede as much, and devote nearly 30 pages of their application to these issues. Appl. at 23-51. Yet, in that entire space, they never come to grips with the fundamental defect in their application. The simple fact is that the United Kingdom does not have in place a number of the measures that MCI has argued are critical prerequisites to creating an effective opportunity to compete. MCI simply cannot meet its burden of demonstrating that effective competitive opportunities exist in the U.K. while at the same time arguing that critical prerequisites are lacking.

2. The local market. Although the applicants assert that interconnection is available in the U.K., they completely fail to explain what the interconnection regime in the U.K. does and

doesn't require, why it is sufficient to ensure that other carriers can compete, or how it compares to the interconnection regime in this country.

The reason is simple. In reality, BT is not subject to many of the requirements imposed on incumbent local carriers in this country. For example, incumbents in the U.S. are required to interconnect with all competing local providers (whether facilities based or not), 47 U.S.C. § 251(c)(2), but incumbents in the U.K. are required to interconnect only with certified facilities-based carriers, known as "Relevant Connectable Systems," OFTEL Stmt. Annex A at ¶ A1.[1] Likewise, incumbents in the U.S. are required to provide access to elements of their local networks on an unbundled basis (such as local loops), 47 U.S.C. § 251(c)(3), but regulators in the U.K. expressly rejected such a requirement for BT. OFTEL Stmt. ¶ 41-47. Yet, in each case, MCI has argued that the requirement imposed on incumbents in the U.S. is necessary to provide an effective opportunity to compete. See generally MCI Comments and Reply Comments, CC Dkt 96-98 (filed May 16 and May 30, 1996, respectively).

Nor is BT subject to the same TELRIC-based pricing standards that the Commission has adopted in this country, and that MCI claims are critical to providing other carriers an opportunity to compete. See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Dkt 96-98, First Report and Order, at ¶¶ 630-740 (rel. Aug. 8, 1996) ("Interconnection Order"). And while incumbents in the U.S. are required to provide services for resale at a wholesale discount, 47 U.S.C. § 251(c)(4), BT is not required to make services available at any discount at all, let alone the inflated discounts produced by the

[1] See OFTEL's Policy on Indirect Access, Equal Access and Direct Connection to the Access Network: Statement from the Director General of Telecommunications ("OFTEL Stmt.").

"avoidable" cost standard adopted by the Commission and backed by MCI. Compare OFTEL Stmt. ¶¶ 15-16 with Interconnection Order, ¶¶ 878-934.

3. The long distance market. As the British equivalent of the old Bell System, BT is the incumbent provider of both local and long distance service in the U.K. In this country, in contrast, the Bell companies will enter the long distance market as new entrants with essentially zero market share. Despite this fact, the Bell companies are subject to far more extensive requirements than BT.

For example, local carriers in the U.S. must provide long distance carriers with "equal access" to their local network for use in completing calls. See 47 U.S.C. § 251(g); see also MTS and WATS Market Structure, Phase III, 100 F.C.C. 2d 860, 877 (1985). Among other things, local carriers are required to provide dialing parity among all competing providers of long distance, including themselves. 47 U.S.C. §§ 251(b)(3) (requiring dialing parity for competing providers of both local and long distance); § 271(e)(2)(A) (requiring intralata toll dialing parity coincident with a Bell company's exercise of in-region interlata authority). BT, however, is subject to no such requirement in the U.K. On the contrary, customers of BT's local and long distance competitors must dial a four digit access code in order to make calls, see OFTEL Stmt. at ¶¶ 9, 23, 36-37, a situation that MCI has claimed in this country would be inimical to competition, see generally MCI Comments and Reply Comments, CC Dkt 96-98 (filed May 20 and June 3, respectively).

Moreover, Bell companies in this country cannot even provide long distance service originating in their local service areas until they have complied with a checklist of terms designed to open their local markets to competitive entry. See 47 U.S.C. § 271(c)(2)(B). Among

other things, they must comply with the requirements described above to provide interconnection and access to unbundled elements, and to make services available for resale at wholesale discounts. Id. BT, however, is not subject to the same requirements in the U.K., and MCI has not explained how long distance competitors in the U.K. can compete even though it has argued in the U.S. that the more extensive requirements already in place are not enough.[2]

4. Safeguards. The applicants also assert that BT is subject to a "broad array" of safeguards that protect new entrants against possible anticompetitive practices. Appl. at 44. But in every instance, the requirements they cite are less than those in place in this country and have been attacked by MCI as inadequate.

For example, in this country, the Bell companies initially must provide long distance service through a separate affiliate, and are subject to numerous additional safeguards designed to protect against every conceivable risk of anticompetitive conduct. See 47 U.S.C. § 272. In contrast, BT has never been subject to a separation requirement, and is not subject to the myriad other safeguards imposed on the Bell companies by statute. Yet, MCI has claimed that even the more stringent requirements imposed on incumbents in this country are not enough, let alone those that apply to BT. See generally MCI Comments and Reply Comments, CC Dkt 96-149 (filed Aug. 15 and 30, respectively).

Likewise, the applicants assert here that adequate "cost allocation rules to prevent cross-subsidization" are in place, and base their claim solely on the fact that BT must separately track costs associated with its various regulatory businesses. Appl. at 44-45. Once again, however,

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[2] See, e.g., MCI, The Effects of BOC Long Distance Entry on Competition In Local and Long Distance Markets: Responses to Questions from the Department of Justice (Dec. 13, 1996).

these are the very types of requirements that MCI has argued are inadequate. See generally MCI Comments and Reply Comments, CC Dkt 96-150 (filed Aug. 26 and Sept. 10, 1996, respectively). And they contrast with the more extensive array of cost allocation and affiliate transaction rules that have long been in place in this country, and that have been supplemented by the 1996 Act. See Implementation of the Telecommunications Act of 1996: Accounting Safeguards, CC Dkt 96-150, Report and Order (rel. Dec. 24, 1996).

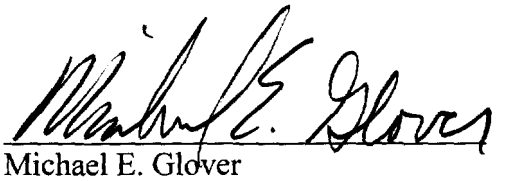
5. Relief requested. Given MCI's directly conflicting claims in this and other proceedings, the applicants here cannot be found to have met their burden of demonstrating that effective competitive opportunities are available in the U.K. If MCI now believes that the claims it has made elsewhere are wrong, then it should say so and explain why the measures in place in the U.K. are adequate, notwithstanding the fact that the U.K. market is less open than the U.S. But unless and until it does so, the license transfer applications filed in connection with BT's takeover of MCI must be denied.

In the meantime, BT/MCI should be required to produce to the Commission and to interested parties any documents that are relevant to determining what it is that the applicants themselves really believe is required to sufficiently open the market. Ultimately, the applicants' own plans and analyses will provide the most probative evidence of what is required to provide an effective opportunity to compete. Requiring the applicants to produce the documents relevant to the issues in dispute is consistent with the practice followed by the Commission in other recent merger-related proceedings. There is no good reason that BT/MCI should not be subject to a similar requirement here.

CONCLUSION

For the foregoing reasons, the license transfer applications filed in connection with BT's takeover of MCI should be denied.

Respectfully submitted,



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January 24, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of January, 1997 a copy of the foregoing "Petition to Deny of Bell Atlantic" was served on the parties on the attached list by messenger.

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